

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONNA TOWNSEL,

Plaintiff,

Case No. 13-cv-10163

v.

HONORABLE STEPHEN J. MURPHY, III

CHAIRMAINE RAUPP, et.al.,

Defendants.

**ORDER ADOPTING
REPORT AND RECOMMENDATION** (document no. 12) **AND GRANTING
DEFENDANT RAUPP'S MOTION FOR SUMMARY JUDGMENT** (document no. 9)

This is a prisoner civil rights case. Plaintiff Donna Townsel has sued numerous individuals who worked at the Michigan Department of Corrections' Women's Huron Valley Correctional Facility ("WHV"), where she was formerly incarcerated, including corrections officers, who allegedly failed to honor her bottom-bunk detail, and healthcare staff members, who allegedly failed to provide her with adequate medical care for the injuries she sustained in a fall. Townsel alleges that Defendants violated the Eighth Amendment's proscription on cruel and unusual punishments, "Michigan Department of Correctional Policies and Operating Procedures" "as well as MCLA 791.206, Promulgation of Rules." (Compl. 3, ECF No. 1). The Court referred all pre-trial proceedings to Magistrate Judge Michelson for resolution or recommendation. On March 28, 2013, Defendant Raupp moved for summary judgment.¹ Although the magistrate judge directed Townsel to file a response

¹ The magistrate judge determined that the U.S. Marshal had only served Raupp even though 11 other defendants were also named. The magistrate judge ordered plaintiff to provide complete names and correct addresses for the other defendants and a copy of the complaint for each by January 3, 2013 so that service could be effected. Order Amending the Caption and Directing Pl. to Provide Correct Addresses for Unserved Defts., ECF No.13.

to the motion, Townsel did not do so. Order for Responsive Pleading and Determination of Mot. without Oral Argument, ECF No. 10. On November 27, 2013, the magistrate judge issued a Report and Recommendation ("Report"), recommending that Raupp's motion be granted both because she showed that no reasonable jury could find that Townsel exhausted her administrative remedies for Raupp's alleged misconduct, and because, even assuming otherwise, Raupp was entitled to qualified immunity.

Civil Rule 72(b) governs review of a magistrate judge's report and recommendation. De novo review of the magistrate judge's findings is only required if the parties "serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). Nevertheless, because a district judge always retains jurisdiction over a motion after referring it to a magistrate judge, he is entitled to review the magistrate judge's findings of fact and conclusions of law on his own initiative. See *Thomas v. Arn*, 474 U.S. 140, 154 (1985) (clarifying that while a district court judge need not review a report and recommendation "de novo if no objections are filed, it does not preclude further review by the district judge, sua sponte or at the request of a party, under a de novo or any other standard").

Because neither party filed objections to the Report,² de novo review of the Report's conclusions is not required. Having reviewed the Report's analysis, in light of the record, the Court finds that its conclusions are factually based and legally sound. Accordingly, it will adopt the Report's findings and grant the motion for summary judgment.

² The Court notes that the copy of the Report sent to Townsel was returned as undeliverable. ECF No. 15.

ORDER

WHEREFORE, it is hereby **ORDERED** that the Report and Recommendation (document no. 12) is **ADOPTED**.

IT IS FURTHER ORDERED that Raupp's motion for summary judgment (document no. 9) is **GRANTED**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: December 27, 2013

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on December 27, 2013, by electronic and/or ordinary mail.

s/Carol Cohron
Case Manager